

January 25, 2005

Forrest Family Partnership  
6205 Lynnhaven Dr.  
Lubbock, TX 79413

Office of the Chief Clerk, MC 105  
TCEQ  
P.O. Box 13-87  
Austin, TX 78711-3887

45812  
WR 3985  
PM OPA H  
FER 11 2005  
BY Q

CHIEF CLERKS OFFICE

2005 JAN 31 AM 10:22

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Request for **Public Meeting** regarding City of Lubbock Water Rights Application  
No. 4340A

To Whom It May Concern:

In regard to the above Application of the City of Lubbock regarding Water Rights, the following is submitted:

1. Name: Forrest Family Partnership – consisting of the following individuals;  
Susan Evans Forrest Sparkman  
Cathey Forrest Colwell  
Laurie Forrest Moy  
David Lamar Forrest
2. Mailing Address: 6205 Lynnhaven Dr, Lubbock, TX 79413  
Phone Number: (806) 535-7402, (806) 792-5252  
Fax Number: (806) 763-5077
3. We request a public hearing;
4. A brief description as to how we will be affected by the application in a way not common to the general public. We own land adjacent to the downstream point of diversion of the water application request which appears would interfere with the flow of water in the North Fork of the Double Mountain Fork of the Brazos River running through our property disabling the personal and commercial use and enjoyment of our property which is leased out for cattle grazing, as water supply for each use is essential; and,
5. The location and distance of our property relative to the proposed activity: The North Fork of the Double Mountain Fork of the Brazos River runs through our property which is legally described in the enclosed copy of the 2004 Crosby CAD tax statement.
  - A-237 Survey 5, Block B9, 274 acres
  - A-403 Survey 731, 334 acres
  - A-392 Survey 13, 640 acres
  - A-1229 Survey 732, Block B9, 32 acres
  - A-1365 Survey 3, Block B9, 134 acres

Q

Perhaps a solution would be some method of guaranteeing that the portion of the River running through our property would never cease due to the City of Lubbock's diversion of water and that our property would always receive a guaranteed flow of water.

Thank you for your consideration in this matter and please inform us of your action and the date, time and place of the public meeting.

Sincerely,

A handwritten signature in cursive script that reads "Cathey Colwell". The signature is written in dark ink and is positioned below the word "Sincerely,".

Cathey Colwell  
Forrest Family Partnership Representative

## PLEASE REMIT TO

CROSBY CAD  
212 W ASPEN STREET  
P.O. BOX 505  
CROSBYTON TX 79322-0505  
806-675-2356

## OWNERSHIP INFORMATION

SPARKMAN SUSAN FORREST

6074 STONECREEK DR  
RENO NV 89511-8514

## TAX STATEMENT

DATE: 10-01-2004

PAGE: 1

LEGAL DESCRIPTION	VALUES	ENTITY	TAXABLE	TAX RATE	TAX DUE
A-403 SURVEY 731 EL&RR	LAND: 0	S06	4420	1.390000	61.44
ACRES: 334.000	D1 PROD: 4420	G54	4420	.769200	34.00
	IMPR: 0	1.43 Savings (SALESTAX)			10b
	PERS: 0	RDB	4420	.120500	5.33
TOTAL ASSD: 4420					
TOTAL MKTV: 33000					

PCL:R-14672  
GEO:210040300000

2004 7324-STMT

A-392 SURVEY 13 D&SE	LAND: 0	S06	8540	1.390000	118.71
BLOCK D-19	D1 PROD: 8540	G54	8540	.769200	65.69
ACRES: 640.000	IMPR: 0	2.78 Savings (SALESTAX)			10b
	PERS: 0	RDB	8540	.120500	10.29
TOTAL ASSD: 8540					
TOTAL MKTV: 64030					

PCL:R-16321  
GEO:210039200000

2004 7325-STMT

A-1229 SURVEY 732 EL&RR	LAND: 0	S07	630	1.450600	9.14
BLOCK B-9 E/PT	D1 PROD: 630	G54	630	.769200	4.85
ACRES: 32.000	IMPR: 0	.20 Savings (SALESTAX)			10b
	PERS: 0	WHP	630	.008300	.05
TOTAL ASSD: 630		RDB	630	.120500	.76
TOTAL MKTV: 3730					

PCL:R-16416  
GEO:210122900000

2004 7326-STMT

A-1365 SURVEY 3 EL&RR	LAND: 0	S07	1640	1.450600	23.79
BLOCK B-9 E/PT	D1 PROD: 1640	G54	1640	.769200	12.61
ACRES: 134.000	IMPR: 0	.53 Savings (SALESTAX)			10b
	PERS: 0	WHP	1640	.008300	.14
TOTAL ASSD: 1640		RDB	1640	.120500	1.98
TOTAL MKTV: 12700					

PCL:R-16724  
GEO:210136500000

2004 7327-STMT

FOR OFFICIAL USE ONLY	ENTITY NAME	CODE	TAX AMOUNT
** CONTINUED NEXT STATEMENT **			

PENALTY & INTEREST IF PAID AFTER JANUARY 31ST	MONTH	DISC/PENALTY	AMOUNT DUE	TOTAL TAX DUE IF PAID
FEB 7%				
MAR 9%				
APR 11%				
MAY 13%				
JUN 15%				
* JUL 18%				
* ADDITIONAL 15% ATTY FEE APPLIES				
SPARKMAN SUSAN FORREST				
6074 STONECREEK DR				
RENO NV 89511-8514				
				TAXES ARE PAYABLE OCT 1 AND BECOME DELINQUENT FEB 1

TO RECEIVE A RECEIPT, PLEASE SEND A SELF-ADDRESSED STAMPED ENVELOPE WITH YOUR PAYMENT

# TAX STATEMENT

## PLEASE REMIT TO

CROSBY CAD  
212 W ASPEN STREET  
P.O. BOX 505  
CROSBYTON TX 79322-0505  
806-675-2356

## OWNERSHIP INFORMATION

SPARKMAN SUSAN FORREST

6074 STONECREEK DR  
RENO NV 89511-8514

DATE: 10-01-2004  
PAGE: 2

LEGAL DESCRIPTION	VALUES	ENTITY	TAXABLE	TAX RATE	TAX DUE
A-237 SURVEY 5 EL&RR	LAND: 0	S06	4110	1.390000	57.13
BLOCK B9	PROD: 4110	G54	4110	.769200	31.61
ACRES: 274.000	IMPR: 0	1.34 Savings	(SALESTAX) Sec32	1.10b	
	PERS: 0	RDB	4110	.120500	4.95
	TOTAL ASSD: 4110				
	TOTAL MKTV: 29590				

PCL:R-90295  
GEO:210023700002

2004 7328-STMT

January 26, 2005

Marianne and John Loveless  
7106-32nd Street  
Lubbock, Texas 79407  
(806) 796-0124

OPA

JAN 28 2005

BY AL

2) Applicant: The City of Lubbock  
seeking to amend Water Use Permit No. 3985

3) "We request a contested case hearing."

4) How we are affected by the application in a way not common to the general public.

Concerning the North Fork Double Mountain Fork Brazos River, Brazos River Basin hereafter referred to as "the river" and The City of Lubbock hereafter referred to as "The City".

To have good water flowing down the river, is vital to life in the canyon and downstream. To pull water from a natural water source in a land where water is scarce, changes the whole dynamics of life for people, animals (wild and farmed), and plantlife. This land, historically and currently is used as grazeland for cattle and horses and for farming. This has also been habitat and watering sites for wildlife for thousands of years. This water is imperative to life downstream from The City of Lubbock. This river has flowed for thousands of years bringing life to plants, animals and people. To take this water would cause diverse changes and the death of much life downriver.

It would be wrong to allow the proposed capture of water with the potential of great harm to the environment and financial damage to the livelihood of those along the river that depend on its water. This proposal leaves the possibilities of greater pollution to groundwater and to properties alongside the subject river.

The City seeks an amendment to authorize the diversion and use from the North Fork River of historic discharge of Canadian River Basin surface water-based effluent and groundwater-based effluent. This is an impossible request, as the historic discharge is long gone downstream and is not possible to be recovered, used, or diverted by anyone. This statement should be removed from the request as it is not possible.

The amount of water The City wishes to retrieve could exceed the amount of water available. There should be no Permit that will ever allow The City to stop the flow of water downstream at any point of the River.

The diversion point chosen by The City of Lubbock is the beginning point of long time grazing and ranching operations. The ranchers and leasees below this point depend on water for cattle for the food industry, use in their homes, and other various business and personal uses. All effluent water that is allowed to flow into the earth is contamination of not only the immediate river, but also the land and underground water of all the surrounding areas downriver from the discharge point. There is no need for this pollution to be released, run through the portion of property referred to as the distance between the discharge point and the most downstream diversion point, therefore releasing more pollutants into our earth. The city needs to reclaim their effluent before it goes into the river. The City has already put in a station at FM 400. It should be usable as the reclamation point for the effluent water. This eliminates the need for another facility to be constructed as a reclamation point.

This also eliminates the concern of the city of evaporation, seepage, channel or other associated carriage losses between those two points. The use of The City's current facility also eliminates The City's request for control of the bed and banks of the river which have always and should remain in control of the landowners.

5) Location and distance of property relative to proposed activity:

Water flows through our property in the upper quarter of the lower half of Section 35, Block S, Lubbock County, Texas, with a tributary running south through Section 35 and all the way through our Section 36, into our NE quarter of Section 39.

The river continues to flow through Forrest Ranch, Sections 38 and 37 of Block S and Section 4 of Block B-9

The river comes back into our property on the northeastern border of Section 1, Block B-9,

The river comes in very close proximity of our property in Section 37, Block S, S 1/2.

Respectfully Submitted,

*John and Marianne Loveless*

John and Marianne Loveless

CLERK'S OFFICE

JAN 27 PM 3:15

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

To:

Office of the Chief Clerk  
MC 105  
TCEQ  
P. O. Box 13087  
Austin, Texas 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

JAN 27 PM 3:15

CHIEF CLERKS OFFICE

January 24, 2005

Martha Jean Forrest McNeely  
P.O. Box 64963  
Lubbock, Texas 79464-43963

H OPA

FEB 01 2005

BY 

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2005 FEB - 1 PM 2:11  
CHIEF CLERKS OFFICE

Office of the Chief Clerk, MC 105  
TCEQ  
P.O. Box 13-87  
Austin, Texas 78711-3887

RE: Request for **Contested Case Hearing** Regarding City of Lubbock Water Rights  
Application No. 4340A


Gentlemen:

In regard to the above Application of the City of Lubbock regarding Water Rights, the following is submitted:

- (1) My name is: Martha Jean Forrest McNeely;
- (2) My mailing address is: P.O. Box, Lubbock, Texas 79464-4963;  
My daytime phone number is: (806) 799-6002;  
My fax number is: (806) 797-7835;
- (3) I request a contested case hearing;
- (4) Brief description as to how I will be affected by the application in a way not common to the general public: I own land adjacent to the downstream point of diversion of the water application request which appears would interfere with the flow of water in the North Fork of the Double Mountain Fork of the Brazos River running through my property disabling the personal and commercial use and enjoyment of my property which is leased out for cattle grazing, as water supply for each use is essential; and,
- (5) The location and distance of my property relative to the proposed activity: The North Fork of the Double Mountain Fork of the Brazos River runs through my property (Section 2 (640 acres), Section 3 (506.8 acres) and Section 4 (s 201.74 acres of 495 acre tract), all in Block B9, Lubbock, County, Texas) South and East of the discharge and diversion points proposed by the City of Lubbock.

Perhaps a solution would be some method of guaranteeing that the portion of the River running through my property would never cease due to the City of Lubbock's diversion of water and that my property would always receive a guaranteed flow of water.

Thank you for your consideration. Please inform me of your action and the date, time and place of the contested hearing.

C  


Yours very truly,

*Martha Jean McNeely*

Martha Jean Forest McNeely



GEORGE NELSON LAW FIRM

1501 AVENUE K  
LUBBOCK, TEXAS 79401

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2005 JAN 28 PM 2:43

GEORGE H. NELSON  
ELIZABETH S. NELSON

January 27, 2005

CHIEF CLERKS OFFICE

TELEPHONE: (806) 765-7788

FACSIMILE: (806) 765-7803

Office of the Chief Clerk  
MC 105  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

JAN 31 2005

BY

Re: Water Rights Application No. 4340A  
Applicant: City of Lubbock, Texas  
Amendment of Water Use Permit No. 3985

Dear Sirs:

This firm represents Clark Wood, Jr., Lynn Forrest, John O. Long, and Michael and Justin Damron. On behalf of each of them **we request a contested case hearing** on the above referenced application filed by the City of Lubbock. Although the "Notice of Water Rights Application" states that "pursuant to 30 TAC § 295.161 (a), notice is being mailed to the water rights holders of record downstream of the City's diversion point in the Brazos River Basin", none of these individuals received such notice.

I am the attorney for the above named parties in regard to this request. My mailing address is 1501 Avenue K, Lubbock, Texas 79401. My daytime telephone number is (806) 765-7788, and my fax number is (806) 765-7803.

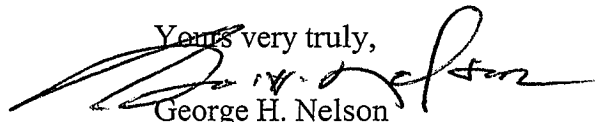
Clark Wood, Jr. owns Water Right # 3709 (ADJ/3709/CO). His mailing address is P. O. Box 129, Slaton, Texas 79364. His daytime telephone number is (806) 828-6249. His property is The C Bar Ranch, located on the North Fork Double Mountain Fork of the Brazos River, east of Slaton, Texas, in Crosby County, Texas, downstream from the discharge and diversion points described in the application of the City of Lubbock. The exact distance from the propose activity is not known at the time this letter is submitted but is believed to be about seven (7) miles east/southeast of the last diversion point set out in the Application. Briefly, and without limitation, it appears from the Notice that the granting of the Application of The City of Lubbock would allow an increased discharge and diversion by the City of Canadian River Basin surface water-based effluent and groundwater-based effluent into and out of the North Fork Double Mountain Fork Brazos River ("North Fork"). Whereas the permit of the City is presently limited to 10,081 acre-feet, the proposed amendment would allow a non-specified and presumably unlimited discharge and diversion, described as "the diversion and use from the North Fork of **all historic and future discharges** of Canadian River Basin surface water-based effluent and ground water-based effluent, including the currently authorized 10,081 acre-feet per year...".

The requested amendment to the permit of the City fails to state whether this non-specific (seemingly unlimited) amount of water which would be discharged into the North Fork by the City is required to be totally diverted immediately by the City for the prescribed uses. If by the Application the City is allowed to discharge an unlimited amount of effluent water into the North Fork without being required to immediately divert and use that discharge, the water way could at times be flooded with the effluent. That would not be a particular problem for Mr. Wood due to his location. However, at other times, particularly in the dry season, the river could be completely dried up by the City diverting its total allowable use based on what it has previously discharged into the water way. Either of these conditions would create a hardship for downstream owners, would disturb the natural or normal flow of the river, and would obviously affect the rights of downstream owners in ways not common to the general public. The City should not be allowed to discharge or divert water out of the river at all, much less be given a permit to discharge and divert water in an unlimited and unspecified volume and at unspecified times and intervals.

Lynn Forrest's mailing address is 12019 E. County Road 7300, Slaton, Texas 79364. His telephone number is (806) 842-3575, and his fax is (806) 842-3576. His property (some owned and some leased) is located near the point of last diversion described in the Application and runs east/southeast of that location about seven (7) miles. John O. Long's mailing address is 8603 FM 400, Slaton, Texas 79364, and his telephone number is (806) 842-3487. His property is approximately within 500 feet below the discharge point described in the Application. The mailing address of Michael and Justin Damron is 8602 FM 400, Slaton, Texas 79364, and their telephone number is (806) 842-3519. Their fax is (806) 842-3976. The own Damron Sand & Gravel which is located on the John O. Long land, and they also own land located below the Long land to and past the last diversion point described in the Application.

Forrest, Long and the Damrons expressly adopt the same objections to the Application as set out on behalf of Clark Wood, Jr. above in this letter. In addition, the granting of the Application could result in flooding the land of Long and the Damrons. It would also appear that the owners of land located above the last diversion or re-claim point described in the Application are subject to having their river banks constantly altered and used by the Applicant. They, like Clark Wood, Jr., object to the granting of the Application as being too vague and non-specific in its terms and because it would allow an interruption of the normal flow of the river. If the Application were granted, their rights as land owners along the North Fork would certainly be affected in ways not common to the general public.

Each of these parties requests a contested case hearing.

Yours very truly,  
  
George H. Nelson  
Attorney

GHN:gc

cc: Mr. Clark Wood, Jr.  
Box 129  
Slaton, Texas 79364

cc: Mr. Lynn Forrest  
12019 East County Road 7300  
Slaton, Texas 79364

cc: Mr. John O. Long  
8603 FM 400  
Slaton, Texas 79364

cc: Mr. Michael Damron  
Mr. Justin Damron  
8602 FM 400  
Slaton, Texas 79364

45872  
WR

**GEORGE NELSON LAW FIRM**

1501 AVENUE K  
LUBBOCK, TEXAS 79401

GEORGE H. NELSON  
ELIZABETH S. NELSON

TELEPHONE: (806) 765-7788  
FACSIMILE: (806) 765-7803

January 27, 2005

H OPA

Office of the Chief Clerk  
MC 105  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

FEB 01 2005

BY JD

CHIEF CLERKS OFFICE

2005 JUN 31 PM 3:14

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Water Rights Application No. 4340A  
Applicant: City of Lubbock, Texas  
Amendment of Water Use Permit No. 3985

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jd

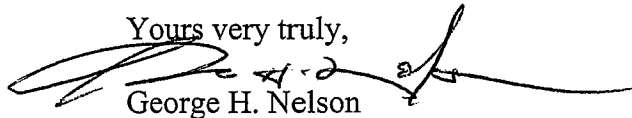
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Forrest, Long and the Damrons expressly adopt the same objections to the Application as set out on behalf of Clark Wood, Jr. above in this letter. In addition, the granting of the Application could result in flooding the land of Long and the Damrons. It would also appear that the owners of land located above the last diversion or re-claim point described in the Application are subject to having their river banks constantly altered and used by the Applicant. They, like Clark Wood, Jr., object to the granting of the Application as being too vague and non-specific in its terms and because it would allow an interruption of the normal flow of the river. If the Application were granted, their rights as land owners along the North Fork would certainly be affected in ways not common to the general public.

Each of these parties requests a contested case hearing.

Yours very truly,



George H. Nelson  
Attorney

GHN:gc

cc: Mr. Clark Wood, Jr.  
Box 129  
Slaton, Texas 79364

cc: Mr. Lynn Forrest  
12019 East County Road 7300  
Slaton, Texas 79364

cc: Mr. John O. Long  
8603 FM 400  
Slaton, Texas 79364

cc: Mr. Michael Damron  
Mr. Justin Damron  
8602 FM 400  
Slaton, Texas 79364

W. Rhein 3925

45872  
WR

# R. E. Janes Gravel Co.

SPECIFICATION SAND AND GRAVEL AGGREGATES

HOME OFFICE: P.O. BOX 2155 PHONE 512.442.7871

Austin, Texas

78768

January 31, 2005

Office of the Chief Clerk  
MC105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

H OPA

FEB 01 2005

BY D

CHIEF CLERKS OFFICE

2005 JAN 31 PM 4:08

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Request for contested case hearing concerning City of Lubbock Water Use Permit Application No. 4340A

Dear Sir or Madam:

I request a contested case hearing concerning City of Lubbock Water Use Permit Application No. 4340A. The City Of Lubbock's ("the City") application justifies the diversion of water in conjunction with its discharge permit (TPDES Permit No. 10353-002). The water discharged can be diverted, minus associated carriage losses. The City's application does not, however, address the timing of the diversion.

In the recent past, the North Fork Double Mountain Fork Brazos River ("North Fork") has run dry on numerous occasions. In a typical year, the North Fork stops flowing during the summer months. Conceivably, the City could build up a surplus of water on account that could be diverted at a later time. Should the City's diversion of water on account occur when the river is slowing, it could cause the North Fork to stop flowing prematurely. R. E. Janes Gravel Co.'s diversion point is approximately 11 miles downstream from the City's proposed diversion point. Any diversion by the City not simultaneous with its discharge could adversely affect R. E. Janes Gravel Co.'s ability to divert water according to TPDES Permit No. 003710-006. R. E. Janes Gravel Co. could be deprived of divertible water. Water is integral to our plant process. Any water shortage could affect our operation and our ability to fulfill material commitments to our customers.

This issue should be addressed before the City's application is permitted.

Sincerely,



Mike Schneider  
Secretary/Treasurer

21

**THE TERRILL FIRM**  
A PROFESSIONAL CORPORATION810 West 10<sup>th</sup> Street  
Austin, Texas 78701  
Tel (512) 474-9100  
Fax (512) 474-9888

January 4, 2010

**OPA****JAN 05 2010****BY** AL

Ron Ellis, Project Manager  
Texas Commission on Environmental Quality  
Water Supply Division - Water Rights Permitting & Availability Section  
12100 Park 35 Circle, Bldg F  
Austin, TX 78753

Via Facsimile: 512 39-4770

**Re: Comments and Supplemental Request for a Contested Case Hearing  
regarding City of Lubbock's Application No. 3985A to Amend Water Use  
Permit No. 3985 (Application No. 4340).**

Dear Mr. Ellis:

The Terrill Firm, P.C. represents R.E. Janes Gravel Co. ("Janes Gravel"). On behalf of Janes Gravel we submit these comments concerning the City of Lubbock's ("Lubbock") application to amend Water Use Permit No. 3985 (Application No. 4340). Further, this letter is also a supplement and elaboration on the hearing request Janes Gravel previously filed, which is incorporated by reference and attached. Accordingly, Janes Gravel does not withdraw its request for a contested case hearing at this time. In light of the fact that the prior draft permit was revised, this letter should be considered by the Commission in addition to the prior-filed request for a contested case hearing.

Janes Gravel is family-owned, and has supplied aggregates to Lubbock and surrounding areas since 1954. Janes Gravel is located approximately ten miles east of Slaton, TX, and employs approximately 35 people. Janes Gravel has been a water right holder on the North Fork of the Double Mountain Fork of the Brazos River ("North Fork") since 1968. It is authorized to annually divert 450 acre-feet ("a.f.") of water to an off-channel reservoir for use in its sand and gravel mining operations. Janes Gravel uses the water it diverts in an industrial process to clean and process rock and sand. Without this water, the majority of its material cannot be recovered. Lubbock's application to amend Water Use Permit No. 3985 threatens to adversely impact Janes Gravel's superior water right, and thus its continued viability and ability to operate.

**Comments & Issues**

The Commission's rules state that "the granting of an application for an amended water right shall not cause an adverse impact to an existing water right." 30 TEX. ADMIN. CODE § 297.45. Further, an application for an amendment to a water right requesting an increase in the appropriative amount or a change in the point of diversion or return flow shall not be granted unless the commission determines that such amended water right shall not cause adverse impact to the uses of other appropriators. 30 TEX. ADMIN. CODE § 297.45.

WR  
45872

CHIEF CLERKS OFFICE

2010 JAN -4 PM 4:52

TEXAS  
COMMISSION  
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January 4, 2010  
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"Adverse impact to another appropriator" includes the possibility of depriving an appropriator of the equivalent quantity or quality of water that was available with the full, legal exercise of the existing water right before the change. 30 TEX. ADMIN. CODE § 297.45. Section 297.45 does not make a distinction allowing a disregard for prior discharges into North Fork. Lubbock's proposed diversion, along with the new draft permit, threatens to adversely impact Janes Gravel's water rights substantially in a number of ways as set out below.

**A. No-injury analysis.**

The Executive Director's staff conducted a no-injury analysis and concluded that Lubbock's request cannot affect existing water rights because the amount of water discharged under its current TPDES permit (10,081 a.f. per year (Approx. 9 MGD, or 27.6 a.f.)) is less than the amount currently authorized for reuse, and that any increase in discharge would be water that has not historically been in the stream. But, Lubbock has indicated that it has discharged 6,048 a.f. into North Fork for years — under the new draft permit, it could divert it, which would cut it off from Janes Gravel and other downstream water right holders. In a nutshell, the new draft permit allows Lubbock to reduce its historic contribution into the North Fork by 6,048 a.f. by diverting it upstream of Janes Gravel and other superior water right holders.

What time period was used to determine historic flows on North Fork? The ownership of historic flows attributable to wastewater discharges, or "return flows<sup>1</sup>," has not been settled. Further, return flows of treated wastewater and stormwater are extremely important components of existing flows in the North Fork. Once Lubbock's effluent and stormwater are discharged into North Fork, they become a source of its ordinary flow.

The Executive Director's staff also concluded that whether the source of the discharge is groundwater or surface water does not affect other water rights because the applicant is authorized to reuse the entire amount of the current TPDES discharge. But, that is inconsistent with the new draft permit's provision that (at least) allows surface water diversions to be called. Further, this conclusion ignores the fact that the new draft permit allows Lubbock to reduce its historic contribution into North Fork by 6,048 a.f.

**B. No ability to call.**

The new draft permit only says that groundwater-based flows do not have a priority date and are not subject to priority calls from senior water right holders. Thus, surface water diversions are subject to call, but not groundwater diversions. Lubbock has indicated that it has only discharged 6,048 a.f. into the North Fork, all of which is groundwater-based. Thus, under the new draft permit, Janes Gravel and other superior water right holders would essentially have no ability to call the portion of Lubbock's historic discharges that they have relied upon for years. Janes Gravel and other

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superior water right holders should be able to rely on the 6,048 a.f. without diversion. Or, at a minimum, it should be subject to call.

**C. Diversion rate.**

The prior draft permit had a provision requiring that the diversion rate not exceed the discharge rate. The new draft permit merely limits the flow rate to 29.45 c.f.s. Since there is no timing mechanism in place to account for low flow/discharge events, the new draft permit fails to address impacts to Janes Gravel and other superior water right holders. Additionally, the *Lubbock Reuse Accounting Plan* ("Plan") does not address low flow/discharge events. The Plan appears to allow Lubbock to divert at times when it has not discharged, as long as it has prior discharges "reserved" under the Plan. At a minimum, the permit should contain a requirement limiting the timing and rate of diversion commensurate with Lubbock's discharges. Further, Lubbock should be required to demonstrate how its proposed diversion will not adversely affect: (1) historic flows of North Fork before and after Lubbock's historic discharges; and (2) rights of Janes Gravel and other superior water right holders along North Fork.<sup>2</sup>

Further, the 29.45c.f.s. diversion rate does not account for the fact that there are no "guaranteed" average flows along North Fork. Under the new draft permit with an averaged-out diversion rate, Janes Gravel risks losing historic flows attributable to irregular natural rainfall events.

29.45c.f.s. is essentially over 19.034 million gallons per day (MGD), or 21,320.92 a.f./year.<sup>3</sup> But, only 9.0MGD is authorized for discharge at Outfall 1. Why is the diversion rate greater than the total authorized discharge? At a minimum, the diversion rate and amount should be limited in quantity and at a time commensurate with Lubbock's authorized discharges. Otherwise, the authorized diversion is impermissibly speculative.

**D. Diversion Monitoring.**

Under the new draft permit, a measuring device is only required for the diversion point, but not the discharge point. A measuring device should be in both the discharge and diversion points. Without this safeguard, how can the Commission confirm whether Lubbock only diverts return flows that are actually discharged?

**E. Diversion Point.**

According to Lubbock's proposed amendment to its Regional Water Plan (available at [www.llanoplan.org](http://www.llanoplan.org)), Lubbock does not intend to use the diversion point it has applied for in its

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<sup>2</sup>The burden of proving that no adverse impact to other water right holders or the environment will result from the approval of the application is on the applicant. 30 TEX. ADMIN. CODE § 297.45(d).

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proposed amendment to Permit No. 3985. Thus, Lubbock's plans, as discussed in its amendment to its Regional Water Plan, appear to make its proposed Permit No. 3985 inconsistent and speculative.

**F. Carriage losses.**

The permit states that the applicant has indicated that .47 % of the discharged water is lost to carriage losses. How was this percentage determined? Lubbock should be required to show how this measurement is accurate. Although the draft permit states that Lubbock is authorized to divert return flows, less transportation losses, the permit does not account for this in its total authorization of 32,991 a.f. The total authorized diversion should be reduced by 0.47%, or in this case, 155.1 a.f., to account for carriage losses, assuming that percentage is accurate.

**G. Stormwater.**

Has Lubbock commingled ground water and surface water with storm water in the waste water process or at its discharge point? Will Lubbock's proposed amendment to Water Use Permit No. 3985 allow it to divert historic stormwater discharges as well? Similar to historic wastewater discharges, Lubbock should not be allowed to divert historic stormwater discharges without considering the impact it would have on water quality and superior water right holders along North Fork.

**H. Water Quality.**

The Commission's rules state that "in its consideration of an amended water rights to take or divert water, the commission shall assess the effects, if any, of the granting of the application on water quality of the stream or river to which the application applies." 30 TEX. ADMIN. CODE § 297.54(a). Neither the draft permit nor its underlying analysis addresses impacts to water quality attributable to the impact the diversion will have on the North Fork as it exists today. Lubbock changed the North Fork's stream characteristics to the extent it has historically discharged into it. This "new" historic flow, in reality, has likely created different characteristics that will be impacted by Lubbock's proposed diversion. Lubbock should be required to demonstrate how its proposed discharge will not affect North Fork's water quality as it exists today.

**Conclusion**

Janes Gravel is concerned about its continued viability and the products, services, and employment it provides to the area. Along that line, Lubbock's plans cannot adversely affect the water rights Janes Gravel relies on to operate. As a result, Lubbock's application should be denied. At a minimum, the Commission should place additional restrictions on the permit to help ensure

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Janes Gravel's and other superior water right holders' rights are protected.<sup>4</sup>

Sincerely,



Scott R. Shoemaker  
THE TERRILL FIRM, P.C.

cc: La Donna Castanuela *Via Facsimile: 512-239-3311*  
Texas Commission on Environmental Quality, Chief Clerk  
MC-105  
P.O. Box 13087  
Austin, TX 78711-3087

Robin Smith *Via Facsimile: 512-239-0606*  
Texas Commission on Environmental Quality, Staff Attorney  
MC-173  
P.O. Box 13087  
Austin, TX 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
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CHIEF CLERKS OFFICE

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<sup>4</sup>The Commission has authority to direct that stream flow restrictions, return flows, and other conditions and restrictions be placed in the permit being issued to protect senior water rights. 30 TEX. ADMIN. CODE § 297.45(e).

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**THE TERRILL FIRM**

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 Austin, Texas 78701  
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January 4, 2010

TEXAS  
 COMMISSION  
 ON ENVIRONMENTAL  
 QUALITY

2010 JAN - 6 PM 2:51  
 CHIEF CLERKS OFFICE

Via Facsimile: 512-392-7770

Ron Ellis, Project Manager  
 Texas Commission on Environmental Quality  
 Water Supply Division - Water Rights Permitting & Availability Section  
 12100 Park 35 Circle, Bldg F  
 Austin, TX 78753

**Re: Comments and Supplemental Request for a Contested Case Hearing  
 regarding City of Lubbock's Application No. 3985A to Amend Water Use  
 Permit No. 3985 (Application No. 4340).**

Dear Mr. Ellis:

The Terrill Firm, P.C. represents R.E. Janes Gravel Co. ("Janes Gravel"). On behalf of Janes Gravel we submit these comments concerning the City of Lubbock's ("Lubbock") application to amend Water Use Permit No. 3985 (Application No. 4340). Further, this letter is also a supplement and elaboration on the hearing request Janes Gravel previously filed, which is incorporated by reference and attached. Accordingly, Janes Gravel does not withdraw its request for a contested case hearing at this time. In light of the fact that the prior draft permit was revised, this letter should be considered by the Commission in addition to the prior-filed request for a contested case hearing.

Janes Gravel is family-owned, and has supplied aggregates to Lubbock and surrounding areas since 1954. Janes Gravel is located approximately ten miles east of Slaton, TX, and employs approximately 35 people. Janes Gravel has been a water right holder on the North Fork of the Double Mountain Fork of the Brazos River ("North Fork") since 1968. It is authorized to annually divert 450 acre-feet ("a.f.") of water to an off-channel reservoir for use in its sand and gravel mining operations. Janes Gravel uses the water it diverts in an industrial process to clean and process rock and sand. Without this water, the majority of its material cannot be recovered. Lubbock's application to amend Water Use Permit No. 3985 threatens to adversely impact Janes Gravel's superior water right, and thus its continued viability and ability to operate.

**Comments & Issues**

The Commission's rules state that "the granting of an application for an amended water right shall not cause an adverse impact to an existing water right." 30 TEX. ADMIN. CODE § 297.45. Further, an application for an amendment to a water right requesting an increase in the appropriative amount or a change in the point of diversion or return flow shall not be granted unless the commission determines that such amended water right shall not cause adverse impact to the uses of other appropriators. 30 TEX. ADMIN. CODE § 297.45.

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cc: La Donna Castanuela *Via Facsimile: 512-239-3311*  
Texas Commission on Environmental Quality, Chief Clerk  
MC-105  
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Robin Smith *Via Facsimile: 512-239-0606*  
Texas Commission on Environmental Quality, Staff Attorney  
MC-173  
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